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Elwood Jefferson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Elwood Jefferson, Plaintiff, vs. Wells Fargo Bank, N.A., Defendant.	Case No.: **COMPLAINT FOR DAMAGES** **FOR VIOLATIONS OF:** **1. THE TELEPHONE CONSUMER PROTECTION ACT** **JURY TRIAL DEMANDED**

Plaintiff, Elwood Jefferson (hereafter "Plaintiff"), by undersigned counsel, brings the following complaint against Wells Fargo Bank, N.A. (hereafter "Defendant") and alleges as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq*. ("TCPA").

2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff's action occurred in this district and/or where Defendant transacts business in this district.

PARTIES

4. Plaintiff is an adult individual residing in Olive Branch, Mississippi, and is a "person" as defined by 47 U.S.C. § 153(39).

5. Defendant is a business entity located in San Francisco, California, and is a "person" as the term is defined by 47 U.S.C. § 153(39).

ALLEGATIONS APPLICABLE TO ALL COUNTS

6. Upon information and belief, a financial obligation was allegedly incurred by a person who is not a party to this lawsuit (hereafter "Debtor").

7. Plaintiff is not the Debtor, has no location information regarding the Debtor, and has no responsibility for repayment of Debtor's debt.

8. At all times mentioned herein where Defendant communicated with any person via telephone, such communication was done via Defendant's agent, representative or employee.

9. At all times mentioned herein, Plaintiff utilized a cellular telephone service and was assigned the following telephone number: 901-XXX-1278 (hereafter "Number").

10. Defendant placed calls to Plaintiff's Number in an attempt to collect a debt.

11. The aforementioned calls were placed using an automatic telephone dialing system ("ATDS") and/or by using an artificial or prerecorded voice ("Robocalls").

12. Defendant left prerecorded messages for Plaintiff stating that the call was an attempt to collect a debt from the Debtor.

13. Plaintiff never provided his cellular telephone to Defendant with regards to the Debtor's account and never provided his consent to be called using an automated dialing system.

14. Moreover, on several separate occasions, Plaintiff spoke with Defendant and requested that Defendant cease calling his Number.

15. On those occasions, Defendant stated that it would place Plaintiff's Number on the "do not call" list.

16. Despite Defendant's assurance that the calls would cease, Defendant continued to call Plaintiff's Number using an ATDS and/or Robocalls at an excessive and harassing rate.

17. Defendant's calls directly and substantially interfered with Plaintiff's right to peacefully enjoy a service that Plaintiff paid for and caused Plaintiff to suffer a significant amount of anxiety, frustration and annoyance.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, *et seq.*

18. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

19. The TCPA prohibits Defendant from using, other than for emergency purposes, an ATDS and/or Robocalls when calling Plaintiff's Number absent Plaintiff's prior express consent to do so. *See* 47 U.S.C. § 227(b)(1).

20. Defendant's telephone system has the earmark of using an ATDS and/or using Robocalls in that Plaintiff, upon answering calls from Defendant, heard a prerecorded message directed to the Debtor.

21. Defendant called Plaintiff's Number using an ATDS and/or Robocalls without Plaintiff's consent in that Defendant either never had Plaintiff's prior express

consent to do so or such consent was effectively revoked when Plaintiff requested that Defendant cease all further calls.

22. Defendant continued to willfully call Plaintiff's Number using an ATDS and/or Robocalls knowing that it lacked the requisite consent to do so in violation of the TCPA.

23. Plaintiff was harmed and suffered damages as a result of Defendant's actions.

24. The TCPA creates a private right of action against persons who violate the Act. *See* 47 U.S.C. § 227(b)(3).

25. As a result of each call made in violation of the TCPA, Plaintiff is entitled to an award of $500.00 in statutory damages.

26. As a result of each call made knowingly and/or willingly in violation of the TCPA, Plaintiff may be entitled to an award of treble damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant for:

A. Statutory damages of $500.00 for each call determined to be in violation of the TCPA pursuant to 47 U.S.C.§ 227(b)(3);

B. Treble damages for each violation determined to be willful and/or knowing under the TCPA pursuant to 47 U.S.C.§ 227(b)(3);

C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: March 15, 2017

TRINETTE G. KENT

By: */s/ Trinette G. Kent*
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Lemberg Law, LLC
Attorney for Plaintiff, Elwood Jefferson